

MAY 8 - 2008

## NEW MEXICO PUBLIC REGULATION COMMISSION FCC Mail Room

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Office of the Chairman

May 6, 2008

**VIA FEDERAL EXPRESS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington DC 20554

Attention: Wireline Competition Bureau, TAPD

**Re: State Commission Certification of Extension of Plateau Telecommunications Inc.'s  
Designation as an Eligible Telecommunications Carrier for  
Universal Service Funds; CC Docket No. 96-45**

Dear Madam Secretary:

In accordance with the Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and, Further Notice of Proposed Rulemaking in CC Docket 96-45, and *Report and Order* in CC Docket No.256 adopted May 10, 2001, the New Mexico Public Regulation Commission ("NMPRC") certifies as follows:

- 1) That Plateau Telecommunications, Inc. has received approval from The New Mexico Public Regulation Commission for the expansion of its competitive eligible telecommunications carrier (CETC) designation in certain New Mexico rural and non-rural areas as indicated in the enclosed Recommended Decision and Final Order (issued April 8, 2008) of the NMPRC in Case No. 07-00206-UT; and
- 2) That federal Universal Service Funds, to the best of our knowledge, and as self-certified by the carrier will be used "only for the provision, maintenance and upgrading of facilities and services for which such support is intended, as outlined in 47 USC § 254(e).

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### Previous Designation

On July 27, 2004, the NMPRC, through its Final Order in Case 03-00345-UT, granted Plateau designation as an ETC for rural service areas for which Plateau is licensed by the FCC to serve as a cellular wireless operator in New Mexico: Rural Service Area 2 (NM RSA 2), currently SAC 499006, and NM RSA 4, currently SAC 499007, corresponding to the rural ILEC exchanges of Baca Valley Telephone Co. Inc, Roosevelt County Rural Telephone Cooperative, La Jicarita Rural Telephone Co-op and Eastern New Mexico Rural Telephone Cooperative ("ENMR").<sup>1</sup> The license in NM RSA 2 is held by ENMR. The license in NM RSA 4 is held by RSA-4 East Limited Partnership. Plateau did not request IAS support for Qwest non-rural exchanges in these areas as part of its previous designation.

### Current Designation

On April 8, 2008, the NMPRC, through its Final Order in Case 06-00206-UT, expanded Plateau's ETC designation for USF support to NM RSAs 2, 4 and 6, with the exception of certain additional service areas.<sup>2</sup> Rural designation was authorized at the rural study area level in Leaco Rural Telephone Cooperative (SAC 492264), Peñasco Valley Telephone Cooperative (SAC 492270), Tularosa Basin Telephone Company (SAC 492264), and Windstream Communications (previously Valor) #1 (SAC 491164) in NM RSA 6. Plateau was also designated for non-rural CETC IAS support in 17 Qwest exchanges in the state in NM RSAs 2, 4, and 6.

The specific details of the companies, exchanges by location, and rate centers of these designation areas to the exchange level are shown in Exhibit A of the attached Recommended Decision of the Hearing Examiner, issued March 14, 2008.

If additional information is required, please contact Michael S. Ripperger, (505-827-6902) at the offices of this Commission's Telecommunications Bureau, Marian Hall, 224 East Palace Avenue, Santa Fe New Mexico 87501.

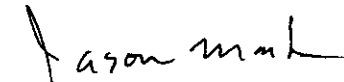
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<sup>1</sup> The small exchanges of White Lakes and Bingham are offered supported services through third party arrangements as the FCC geographic wireless license does not extend into these areas.

<sup>2</sup> See page 10. FN 23 of attached Recommended Decision of the Hearing Examiner for an explanation of those excepted areas.

Marlene H. Dortch, Secretary  
Federal Communications Commission  
May 6, 2008  
Page 3 of 3

Sincerely,

A handwritten signature in black ink that reads "Jason marks". The signature is written in a cursive, slightly slanted style.

Jason A. Marks  
Chairman

With copies as follows to:

Karen Majcher  
Vice President, High Cost and Low Income Division  
**Universal Service Administrative Company**  
2000 L Street, NW, Suite 200  
Washington, DC 20036

**Universal Service Administrative Company**  
444 Hoes Lane  
RRC 4A1060  
Piscataway, NJ 08854

and via E-mail to the same at: [hcfilings@hcli.universalservice.org](mailto:hcfilings@hcli.universalservice.org)

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF PLATEAU )  
TELECOMMUNICATIONS INC.'S PETITION )  
FOR EXTENSION OF ITS ELIGIBLE )  
TELECOMMUNICATIONS CARRIER )  
DESIGNATION PURSUANT TO SECTION 214(e)(2) )  
OF THE COMMUNICATIONS ACT OF 1934, )  
AS AMENDED )  
\_\_\_\_\_ )

Case No. 07-00206-UT

Received & Inspected

MAY 8 - 2008

FCC Mail Room

**RECOMMENDED DECISION OF THE HEARING EXAMINER**

March 14, 2008

## **TABLE OF CONTENTS**

I.	STATEMENT OF THE CASE.....	1
II.	DISCUSSION .....	7
A.	The Parties .....	7
B.	Federal and State Statutory and Regulatory Requirements .....	9
C.	Analysis .....	12
1.	Plateau’s Status as a Common Carrier.....	12
2.	Supported Services .....	13
3.	Advertising.....	17
4.	Providing Services Throughout the Designated Area.....	19
5.	The Public Interest.....	20
III.	FINDINGS OF FACT AND CONCLUSIONS OF LAW .....	31
IV.	ORDERING CLAUSES .....	32

Anthony F. Medeiros, Hearing Examiner for this case, submits this Recommended Decision to the New Mexico Public Regulation Commission ("Commission" or NMPRC) pursuant to Rules 17.1.2.32.E(4) and 17.1.2.39.B of the New Mexico Administrative Code (NMAC). The Hearing Examiner recommends the Commission adopt the following statement of the case, discussion, findings of fact, conclusions of law and ordering clauses in its Final Order.

## **I. STATEMENT OF THE CASE**

On May 11, 2007, Plateau Telecommunications, Inc. ("Plateau") filed a Petition for Extension of its Eligible Telecommunications Carrier (ETC) Designation (the "Petition"). The Petition requests that Plateau be granted, pursuant to section 214(e)(2) of the federal Communications Act,<sup>1</sup> designation as a federal ETC in specified rural incumbent local exchange carrier (ILEC) service areas in New Mexico Rural Study Area 6 ("NM RSA 6" or "RSA 6")<sup>2</sup> and in the non-rural wire centers, or exchanges, of Qwest Corporation ("Qwest") in NM RSA 2, NM RSA 4<sup>3</sup> and NM RSA 6.

As an ETC, Plateau will be eligible to draw support from the federal High Cost Fund (HCF or "federal fund")<sup>4</sup> for the provisioning of services supported by the federal universal

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<sup>1</sup> 47 U.S.C. § 214(e)(2). The Communications Act of 1934, as amended by the Telecommunication Act of 1996 – Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* – is referred to hereafter as the "Act."

<sup>2</sup> New Mexico RSA 6 is located in the southeast quadrant of the state. It stretches from Otero and Lincoln counties in the west across Chaves and Eddy counties to the Lea county border with Texas. It is divided into three constituent parts, which, from west to east, are of RSA 6-I, RSA 6-II and RSA 6-III. See Plateau Exh. 1 (Plateau Petition), Exh. G-2 thereto.

<sup>3</sup> RSA 4 is contiguous with the northern boundary RSA 6. It includes, from west to east, the central eastern New Mexico counties of Torrance, San Miguel, Guadalupe, De Baca, Quay, Roosevelt and Curry. RSA 2 covers Mora, Colfax, Harding and Union counties. See Plateau Exh. 1 (Plateau Petition), Exh. G-2 thereto.

<sup>4</sup> For purposes of this case, the relevant aspects of the HCF include: High Cost Loop Support (HCL), which is covered by Subpart F of Part 36 the FCC's rules (47 C.F.R. § 36.601, *et seq.*); Local Switching Support (LSS), which is covered by Subpart D of Part 54 (47 C.F.R. § 54.301); and Interstate Common Line Support (ICLS), which is covered by Subpart K of Part 54 (47 C.F.R. § 54.901, *et seq.*). See Exh. 1 to Joint Motion for Post-Hearing Admission of Replacement and Supplemental Exhibits.

service fund (USF) in rural service areas in RSA 6 and to receive federal Interstate Access Support (IAS)<sup>5</sup> in the Qwest exchanges in RSA 2, RSA 4 and RSA 6.

In 2004, the Commission granted Plateau designation as an ETC eligible to receive HCF support for rural service areas in RSA 2 and RSA 4.<sup>6</sup> Plateau did not request IAS support for Qwest non-rural exchanges at that time. Plateau does not seek authority to receive support from the State Rural Universal Service Fund (SRUSF)<sup>7</sup> for any of the rural service areas and Qwest wire centers in question.

On June 20, 2007, the Commission issued an Order appointing the undersigned to preside over this matter and submit a recommended decision on whether the Commission should approve Plateau's ETC Petition.

On June 22, 2007, the Hearing Examiner issued an Order setting a pre-hearing conference for July 17, 2007. Due to scheduling conflicts the pre-hearing conference was rescheduled for July 26, 2007.

The pre-hearing conference was held on July 26, 2007. Representatives of Plateau, Tularosa Basin Telephone Company, Inc. ("Tularosa Basin"), Windstream Communications Southwest ("Windstream") and Staff of the Commission's Utility Division ("Staff") attended either in person or participated via teleconference. As a result of the pre-hearing conference, the Hearing Examiner issued a Procedural Order that same day which set this matter down for a hearing on the merits on October 17, 2007 and in the meantime required the filing of Plateau testimony and any amendments to the Petition by August 20, 2007, motions to intervene by

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<sup>5</sup> IAS is covered by Subpart J of Part 54 (47 C.F.R. § 54.800, *et seq.*).

<sup>6</sup> See *In the Matter of Plateau Telecommunications Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934*, NMPRC Case No. 03-00345-UT, Final Order (July 27, 2004) (adopting Recommended Decision of the Hearing Examiner issued June 25, 2004).

<sup>7</sup> 17.11.10 NMAC, *et seq.*

August 24, 2007, intervenor testimony by September 10, 2007, Staff testimony by September 26, 2007 and rebuttal testimony by October 5, 2007. The Procedural Order also required Plateau to mail the Notice attached to the Procedural Order to the Commission's Telecommunications Service List and to the local exchange carriers (LECs) and existing ETCs in the areas of service where Plateau seeks ETC designation. In addition, Plateau was required to cause the Notice to be published one time in a newspaper of general circulation in its service area, *i.e.*, the *Albuquerque Journal*, and in newspapers of general circulation in Clovis, Hobbs, Roswell and Carlsbad, New Mexico, and to promptly file with the Commission affidavits of publication and mailing.

On August 20, 2007, Plateau filed a supplement to its Petition and the Direct Testimony of Tom M. Phelps. That same date, Plateau filed the following affidavits of publication: *Albuquerque Journal*, publication on August 3, 2007; *Clovis News Journal*, publication on August 3, 2007; *Hobbs News-Sun*, publication on August 3, 2007; *Roswell Daily Record*, publication on July 31, 2007; and *Carlsbad Current-Argus*, publication on July 31, 2007. On September 7, 2007, Plateau filed a Notice of Filing of Mailing of Attachment to Procedural Order to the Telecommunications Service List and to all intervenors known as of that date.

Plateau filed a Motion for Protective Order on August 2, 2007. On August 7, 2007, Plateau filed the affidavit of Tom M. Phelps supporting the request for a protective order. Staff filed a request for additional time to respond to Plateau's Motion for Protective Order on August 15, 2007. Staff's motion was granted on August 16, 2007. Staff and Plateau filed on August 24, 2007 a joint motion for adoption of the new form of protective order and asked that the response time of thirteen calendar days be waived and shortened to five business days. The Hearing Examiner granted that motion on August 27, 2007. Subsequent to their intervention (*see infra*),



Tularosa Basin filed its Response to the proposed protective order on August 31, 2008. On September 6, 2007, Staff filed its Response, Reply and Amendment to Protective Order in this docket as well as in Case Nos. 07-00235-UT and 07-00091-UT. In that filing, Staff accepted some of Tularosa Basin's proposed amendments. Plateau filed its Reply to Response to Tularosa Basin on September 7, 2007.

On September 10, 2007, the Hearing Examiner issued a Protective Order. On October 1, 2007, Plateau filed nondisclosure agreements on behalf of Tom M. Phelps, Plateau's CEO; Launa Waller, Plateau's Regulatory Manager; Jack Nuttall, Plateau's Product Manager; Jeffrey H. Albright, Attorney, Lewis and Roca Jontz Dawe, LLP; Shelly Jenkins, Paralegal, Lewis and Roca Jontz Dawe, LLP; and Cynthia Collins, Legal Secretary, Lewis and Roca Jontz Dawe, LLP. On October 1, 2007, Staff filed nondisclosure agreements on behalf of Michael S. Ripperger, Telecommunications Bureau Chief; Ken D. Smith, Utility Economist; and Joan Ellis, Staff Counsel. On October 10, 2007, Windstream filed nondisclosure agreements on behalf of Bill Garcia, Windstream's Vice President, New Mexico Government Affairs; and Nickie Vigil-Garcia, Windstream's Manager of Government Affairs. Following its late intervention (see below), on October 11, 2007 Mescalero Apache Telecom, Inc. (MATI) filed nondisclosure agreements on behalf of Alan P. Morel, Esq.; Patricia F. Brimberry, Paralegal; Godfrey Enjady, MATI's General Manager; Jaime Flores, MATI's Operations Manager; and Jerome Block, MATI's Regulatory Compliance representative.

On September 13, 2007, MATI filed a Motion for Late Intervention. On September 26, 2007, Plateau filed an Objection to MATI's motion. On October 3, 2007, the Hearing Examiner

issued an order granting MATI's late intervention with certain limitations in conformity with 17.1.2.26.D(3) and 17.1.2.26(D)(5) NMAC.<sup>8</sup>

On September 25, 2007, Staff filed an Unopposed Motion for Extension requesting that the deadline for filing of Staff's testimony be extended from September 26, 2007 to October 3, 2007, and that the deadline for rebuttal testimony be extended from October 5, 2007 to October 10, 2007, stating as grounds the uncertainty of the disposition of MATI's Motion for Late Intervention. Staff's motion was granted on September 26, 2007.

On September 26, 2007, Plateau filed a Second Supplement to its Petition, providing clarification of cell site locations in RSA 6 and confirming that it had not built a cell tower on the Mescalero Reservation.

Staff filed the Direct Testimony of Michael S. Ripperger on October 3, 2007, and on October 10, 2007 Plateau filed the Rebuttal Testimony of Tom M. Phelps.

On October 11, 2007, Intervenors Tularosa Basin and Windstream requested, through e-mail correspondence copied on all counsel of record, to be excused from the Hearing, but requested to reserve their status for purposes of filing any post-hearing briefs, proposed forms of order and exceptions. The requests were not opposed and were granted.

An evidentiary hearing on the merits was held in this matter on October 17, 2007. The following counsel entered appearances at the hearing: Jeffrey H. Albright of Albuquerque, New Mexico for Plateau; Alan P. Morel of Ruidoso, New Mexico for MATI; and Joan Ellis of Santa Fe, New Mexico for Staff. During the course of the hearing the following witnesses presented testimony and were subject to cross-examination: Tom M. Phelps on behalf of Plateau; and

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<sup>8</sup> See Order Regarding Mescalero Apache Telecom Inc.'s Motion for Late Intervention (issued Oct. 3, 2007), at 6, ¶ 12 & ordering clause A.

Michael S. Ripperger on behalf of Staff. MATI, Tularosa Basin and Windstream did not offer testimony or affidavits. No persons appeared to provide public comment in this case.

On November 7, 2007 a status conference was held during which Plateau and Staff reached agreement as to the additional items identified by Staff witness Ripperger in his Direct Testimony. They also agreed to file a joint motion requesting post-hearing of replacement and supplemental exhibits to Plateau's Petition and its direct and rebuttal testimony in order to satisfy the additional items requested by Staff.

On November 26, 2007, Staff and Plateau filed their Joint Motion for Post Hearing Admission of Replacement and Supplemental Exhibits to Plateau Petition and Testimony in response to an agreement reached by all parties at the hearing to supplement the record. The information provided in the supplement included revised information related to non-rural Qwest and rural exchange support, wire center CLLI/NPA-NXX code information, a more descriptive definition of local calling, an updated confidential five-year plan consistent with SRUSF petitions for ETC designation and support rates under 17.11.10.24 NMAC, home service area and expanded home service area maps, an updated map of existing cell tower sites, and a more current map depicting the service areas of Independent Telephone Companies.

On December 3, 2007, the Hearing Examiner issued an Order Regarding Admission of Exhibits and Requiring Proposed Forms of Order. The Hearing Examiner ordered that new and replacement exhibits be admitted into evidence and made part of the official record of the case.

Plateau and Staff filed their Joint Proposed Recommended Decision and Form of Order on February 1, 2008. MATI, Tularosa Basin and Windstream did not file post-hearing briefs.

On March 6, 2008, Plateau filed a Notice of Filing of Missing Text for Proposed Joint Recommended Decision.

On March 11, 2008, Plateau filed a Clarification of Staff's and Plateau's Joint Proposed Recommended Decision.

On March 12, 2008, Plateau filed a Revised Clarification of Staff's and Plateau's Joint Proposed Recommended Decision (the "Revised Clarification").

## **II. DISCUSSION**

### **A. The Parties**

Plateau is a telecommunications carrier as defined by section 153(44) of the Act.<sup>9</sup> Plateau is presently authorized by the FCC to provide commercial mobile radio service (CMRS) under the brand name "Plateau Wireless" in the following New Mexico counties: Colfax, Union, Mora, Harding, Quay, San Miguel, Torrance, Guadalupe, De Baca, Curry, Roosevelt, Lincoln, Lea, Otero, Chaves and Eddy.<sup>10</sup> Plateau manages three New Mexico Rural Service Areas, RSAs 2, 4 and 6,<sup>11</sup> that cover all of the aforementioned counties, except for excluded portions of western Lincoln and Otero counties.<sup>12</sup> The CMRS services provided by Plateau include mobile telephony, data/facsimile, 911, enhanced 911 ("E-911"), voicemail, and other features and services.<sup>13</sup> In addition to Plateau's cellular service offerings in New Mexico, companies

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<sup>9</sup> 47 U.S.C. § 153(44). Section 153(43) defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received." In turn, a "telecommunications carrier" is defined as "any provider of telecommunications services . . . ." 47 U.S.C. § 153(44). Finally, section 153(46) defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public." 47 U.S.C. § 153(46).

<sup>10</sup> Plateau Exh. 4 (Phelps Direct), p. 2.

<sup>11</sup> When Case No. 03-00345-UT was pending, Plateau had licenses to provide service in RSAs 2, 4 and 6-II. Recommended Decision, Case No. 03-00345-UT, at 7. Plateau recently acquired licenses to provide service in RSA 6-I and RSA 6-III. Plateau Exh. 4 (Phelps Direct), at 4.

<sup>12</sup> The excluded portions in the western parts of Lincoln and Otero counties are "uncertified areas" because they are part of the White Sands Missile Range and therefore are not available for coverage. Revised Clarification, at 2, fn. 3.

<sup>13</sup> Plateau Exh. 4 (Phelps Direct), p. 2.

affiliated with Plateau, such as Eastern New Mexico Rural Telephone Cooperative (ENMR), provide or are authorized to provide brand name and competitive local services in the state.<sup>14</sup>

Pursuant to the ETC designation granted by the Commission in Case No. 03-00345-UT, Plateau currently receives federal HCF support in NM RSA 2 and NM RSA 4 in the entire service areas of Baca Valley Telephone Co., Inc. and La Jicarita Rural Telephone Cooperative and in the portions of the service area of Roosevelt County Rural Telephone Cooperative (“Roosevelt Co-op”) in RSA 4 and the service area of ENMR in RSAs 2 and 4.<sup>15</sup> However, in that case the Commission granted ETC designation for the entirety of the service areas of Roosevelt Co-op and ENMR.<sup>16</sup> The southernmost portion of Roosevelt Co-op’s service area is in RSA 6-III and the southernmost portion of ENMR’s service area resides in RSAs 6-II and 6-III.<sup>17</sup> Plateau has not received HCF support for the portions of ENMR’s and Roosevelt Co-op’s service areas in RSA 6, nor is it seeking HCF support for those areas in this case. The Commission most recently included Plateau for federal HCF support in RSA 2 and RSA 4 in its annual certification to the FCC on September 25, 2007.<sup>18</sup>

Windstream and Tularosa Basin sought and were granted intervention by operation of 17.1.2.26 NMAC. However, neither intervenor filed testimony and, as requested, each was excused from the proceedings at the hearing.

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<sup>14</sup> Recommended Decision, Case No. 03-00345-UT, at 7.

<sup>15</sup> *Id.* at 37, ¶ B and Exh. A.

<sup>16</sup> *Id.*

<sup>17</sup> See Exh. 7 to the Joint Motion for Post-Hearing Admission of Replacement and Supplemental Exhibits. As represented in Exhibit 7, the portion of ENMR’s service area in the northernmost part of RSA 6 is depicted as the “crosshatched” portions of Lincoln and Chaves counties and the adjoining portion of Roosevelt Co-op’s service area in RSA 6 is depicted as the blue diagonal parts of Chaves and Lea counties. See *id.* Revised Clarification, at 2, fn. 3.

<sup>18</sup> Plateau Exh. 6.

MATI sought late intervention, which was objected to by Plateau. As noted above, MATI was granted intervention subject to the limitations of 17.1.2.26.D(3) and 17.1.2.26(D)(5) NMAC. MATI did not file any testimony, but counsel for MATI participated in the hearing and conducted cross-examination of Plateau's and Staff's witnesses.

Staff filed testimony, participated in the hearing and its witness was subject to cross-examination. At the hearing, Staff recommended approval of Plateau's Petition conditioned on Plateau's providing additional information and providing supplements to the record. Staff and Plateau agreed to the supplemental data and replacement exhibits made part of the record in post-hearing filings, and agreed that they met the reporting requirements of 17.11.10.24.A. NMAC.

#### **B. Federal and State Statutory and Regulatory Requirements**

Plateau brought its Petition pursuant to section 214(e)(2) of the Act<sup>19</sup> and SRUSF Rule 24,<sup>20</sup> which establishes state guidelines for carriers seeking state or federal ETC designation. SRUSF Rule 24.E provides that, "[t]he Commission may approve a petition for designation as a federal ETC in conjunction with a petition for designation as a state ETC."<sup>21</sup>

New Mexico RSA 6 encompasses both rural areas served by rural ILECs and embedded non-rural areas in and around Alamogordo, Artesia and Roswell that are pieces of Qwest's territory. Plateau seeks federal ETC designation in the rural ILEC service areas in RSA 6 of Leaco Rural Telephone Cooperative ("Leaco"), Peñasco Valley Telephone Cooperative ("Peñasco Valley"), Tularosa Basin and Windstream Zone 1.<sup>22</sup> The remaining rural service areas in RSA 6 are not included in Plateau's request for various reasons revealed over the course of

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<sup>19</sup> 47 U.S.C. § 214(e)(2).

<sup>20</sup> 17.11.10.24 NMAC.

<sup>21</sup> 17.11.10.24.E NMAC.

<sup>22</sup> See Exhibit A to this decision.

this proceeding.<sup>23</sup> Moreover, as noted, Plateau seeks federal ETC designation for the non-rural Qwest exchanges in RSAs 2, 4 and 6 listed in Exhibit A to this decision. All of the rural service areas and Qwest exchanges are within Plateau's authorized cellular licensed area in New Mexico.<sup>24</sup>

The Commission has previously designated at least one common carrier as an ETC in most, if not all, of the service areas in RSA 6.<sup>25</sup> Plateau's Petition therefore falls under the provisions of section 214(e)(2) dealing with requests for ETC designation in areas already served by one or more ETCs. In such cases, section 214(e)(2) prescribes that, "[u]pon request and consistent with the public interest, convenience and necessity," a state commission *may* designate more than one common carrier as an ETC in "an area served by a *rural* telephone company" and *shall* designate an additional carrier as an ETC in "all *other* [*i.e.*, non-rural] areas," provided that "each additional requesting carrier meets the requirements of [section

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<sup>23</sup> As explained in the Revised Clarification, at 2, fn. 3, the following rural exchanges in RSA 6 were not included in Plateau's request for ETC designation in this case for the following reasons: (i) as noted above, the "uncertified areas" in the west of Otero and Lincoln Counties were not requested. They are uncertified because they are part of White Sands Missile Range and therefore are not available for coverage; (ii) as also noted above, Plateau was previously granted ETC status in the ENMR "crosshatched" area of RSA 6-II and RSA 6-III and in the Roosevelt Co-op area in RSA 6-III in the Final Order in Case No. 03-00345-UT; (iii) MATI's service area was excluded consistent with the testimony provided during the hearing; (iv) Dell Telephone Cooperative's service area was not requested because Plateau does not provide 100 percent coverage of Dell's area; and (v) the Windstream Zone 2 area in the northwest portion of RSA 6 in Lincoln County was not requested because Windstream 2, part of the old GTE of the Southwest study area, is physically separated from and is non-contiguous with the portion of Windstream 2 that is located in the Española area. Plateau does not have a license to cover the portion of Windstream 2 in Española, hence it is not requesting ETC designation in the Windstream 2 portion of RSA 6 since it does not provide 100 percent coverage of the Windstream 2 area. These rural exchanges can be seen in Exhibit 7 to the Joint Motion for Post-Hearing Admission of Replacement and Supplemental Exhibits.

<sup>24</sup> Plateau Exh. 4 (Phelps Direct), pp. 2, 4.

<sup>25</sup> Evidence in the record indicates that Alltel, formerly Western Wireless, has been granted ETC designation for most of RSA 6. Leaco Rural Telephone Cooperative ("Leaco"), Leaco CLEC and MATI have also been designated as ETCs for specific service areas in RSA 6. Plateau Exh. 5 (Phelps Rebuttal), pp. 7, 11; Tr. (Phelps), p. 72.

214(e)(1)]”.<sup>26</sup> In addition, before designating an additional ETC for an area served by a rural ILEC, “the state commission shall find that the designation is in the public interest.”<sup>27</sup>

A requesting carrier meets the requirements of section 214(e)(1) if it: (1) is a common carrier; (2) will offer the services supported by the federal universal service fund either using its own facilities or combination of its own facilities and resale of another carrier’s service; (3) will advertise the availability of the supported services; and (4) will make the supported services available throughout a designated service area.<sup>28</sup> In addition, qualifying carriers must offer discounts to low-income consumers through the federal Lifeline and Linkup programs.<sup>29</sup>

Universal service support may be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>30</sup> However, ETC designation does not in and of itself impart an entitlement to support from the federal fund. Rather, ETC designation makes a carrier eligible to receive funding to support subscribers of its universal service offerings that comply with the FCC’s rules and regulations.

Further, once designated, “a carrier’s continuing status as an [ETC] is contingent upon continued compliance with the requirements of section 214(e) and only an eligible carrier that succeeds in attracting and/or maintaining a customer base to whom it provides universal service

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<sup>26</sup> 47 U.S.C. § 214(e)(2) (emphasis added).

<sup>27</sup> *Id.*

<sup>28</sup> 47 U.S.C. § 214(e)(1)(A) & (B).

<sup>29</sup> 47 C.F.R. §§ 54.405, 54.411. There are three components to the federal USF’s Low Income Program. Lifeline support reduces eligible customers’ monthly charges for basic telephone service. Linkup support reduces the cost of initiating new telephone service. The third component, Toll Limitation Service, or TLS, allows eligible customers to subscribe to toll blocking or toll control at no cost. See [www.universalservice.org/li/about/default.aspx](http://www.universalservice.org/li/about/default.aspx). The Universal Service Administrative Company (“USAC”) administers the USF, including among other things, the HCF and the Low Income Program.

<sup>30</sup> 47 U.S.C. § 254(e); 47 C.F.R. § 54.7. See 17.11.10.27.A NMAC (“Fund support must be used to preserve and advance universal service support”).



will receive universal service support.<sup>31</sup> A carrier's continuing status as an ETC also requires compliance with SRUSF annual verification,<sup>32</sup> reporting<sup>33</sup> and the federal certification<sup>34</sup> requirements.

## **C. Analysis**

### **1. Plateau's Status as a Common Carrier**

A common carrier is defined in 47 U.S.C. § 153(10) as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. Section 332(a)(1) of the Act provides that a CMRS provider is treated as a common carrier except as otherwise determined by the FCC, and 47 C.F.R. § 20.9(a)(7) specifically provides that cellular service, such as that provided by Plateau, is considered a common carrier service. Staff's and Plateau's witnesses agreed that Plateau is a common carrier.<sup>35</sup> No evidence or testimony was introduced to the contrary. In Case No. 03-00345-UT, the Commission found that Plateau was a common carrier and its status has not changed since then.<sup>36</sup> Plateau therefore meets the requirement of being a common carrier for purposes of ETC designation.

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<sup>31</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8853-8854, ¶ 138 (rel. May 9, 1997) ("First Report and Order"), *aff'd in part and rev'd on other grounds*, *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *cert. granted*, *GTE Serv. Corp. v. FCC*, 530 U.S. 1213, *cert. dismissed*, 531 U.S. 975 (2000).

<sup>32</sup> 17.11.10.24.F NMAC.

<sup>33</sup> 17.11.27 NMAC (Reporting Requirements for Eligible Telecommunications Carriers; New Mexico Register, Vol. XIX, No. 3, Feb. 14, 2008). *See In the Matter of the Certification of Eligible Telecommunications Carriers to the Federal Communications Commission*, NMPRC Case No. 05-00359-UT, Final Order (Oct. 25, 2007) (adopting 17.11.27 NMAC). Rule 27.C provides that compliance with the reporting requirements of the rule satisfies the ETC's annual verification requirements under Subsection F of 17.11.10.24 NMAC.

<sup>34</sup> 47 C.F.R. §§ 54.313 & 54.314.

<sup>35</sup> Plateau Exh. 4 (Phelps Direct), p. 5; Staff Exh. 1 (Ripperger Direct), p. 10.

<sup>36</sup> Recommended Decision, Case No. 03-00345-UT, at 13.

## 2. Supported Services

The FCC has identified nine core services supported by federal universal service mechanisms that a qualifying carrier's basic universal service offering must provide. The nine supported services are: (1) voice-grade access to the public switched telephone network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers.<sup>37</sup>

Plateau's basic universal service offering is its "Safety and Security Plan." The Plan is priced at \$19.95 a month after applicable low income discounts, carries a \$25.00 activation fee after the Linkup discount, and includes 100 local anytime minutes, caller id, monthly carryover minutes and free nationwide long distance.<sup>38</sup> The Plan was approved by the Commission for RSAs 2 and 4 in Case No. 03-00345-UT.<sup>39</sup> Plateau maintains through its pre-filed testimony and evidence proffered at the hearing that its Plan satisfies each of the nine supported services required for a basic universal service offering for RSA 6.

The first required supported service, voice-grade access to the public switched telephone network (PSTN), is the ability to make and receive phone calls, at a bandwidth of approximately 2700 Hertz, within the 300 to 3000 Hertz frequency range.<sup>40</sup> Plateau says it meets this requirement by permitting all Plateau customers to make and receive calls on the PSTN within

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<sup>37</sup> 47 C.F.R. § 54.101(a).

<sup>38</sup> Plateau Exh. 1 (Exh. F to Petition). *See* Recommended Decision, Case No. 03-00345-UT, at 31-32.

<sup>39</sup> *Id.*

<sup>40</sup> *See In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, 13 FCC Rcd 5318 (rel. Dec. 30, 1997) ("*Fourth Order on Reconsideration*"), at ¶ 16, 1997 WL 797532 at \*5.

the specified bandwidth, through its interconnection arrangements with local telephone companies including Qwest, Windstream and ENMR.<sup>41</sup>

The second supported service a competitive ETC must offer is local usage. To date, neither the Commission nor the FCC has quantified a minimum amount of local usage required to be included in a universal service offering.<sup>42</sup> As noted, Plateau's proposed universal service offering includes one hundred local minutes and free nationwide long-distance.<sup>43</sup> These usage features were part of the universal service offering (*i.e.*, Plateau's Plan) approved by the Commission for RSA 2 and RSA 4 in Case No. 03-00345-UT.<sup>44</sup>

The third service is dual-tone, multi-frequency (DTMF) signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. Additionally, consistent with the principles of competitive and technological neutrality, the FCC permits carriers to provide signaling that is functionally equivalent to DTMF in satisfaction of this service requirement.<sup>45</sup> Plateau currently uses out-of-band digital signaling and in-band multi-frequency (MF) signaling that is functionally equivalent to DTMF signaling.<sup>46</sup>

The fourth service, "single-party service," means that only one party will be served by a subscriber loop or access line as opposed to a multi-party line.<sup>47</sup> The FCC has concluded that a wireless provider offers the equivalent of single-party service when it provides a dedicated

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<sup>41</sup> Plateau Exh. 4 (Phelps Direct), p. 6.

<sup>42</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21276-21281 (rel. Oct. 26, 1998).

<sup>43</sup> Exh. F to Plateau Exh. 1 (Petition).

<sup>44</sup> Recommended Decision, Case No. 03-00345-UT, at 14, 17.

<sup>45</sup> 47 C.F.R. § 54.101(a)(3).

<sup>46</sup> Plateau Exh. 4 (Phelps Direct), p. 7.

<sup>47</sup> *First Report and Order*, 12 FCC Rcd at 8810, ¶ 62.

message path for the length of a user's particular transmission.<sup>48</sup> Plateau contends it fulfills this requirement by providing a dedicated message path for the length of all customer calls.<sup>49</sup>

The fifth service ETCs must offer is "access to emergency services."<sup>50</sup> Universal service offerings must include the ability to reach a public emergency service provider by dialing 911. Access to emergency services includes access to 911 or E-911. Plateau claims it satisfies this requirement at the current time by providing all of its customers access to emergency services through dialing 911. Further, Plateau affirms it has met all requests for 911 and E-911 from the Public Safety Answering Points (PSAPs) in RSA 6, and commits to meeting any future requests.<sup>51</sup>

The sixth service is access to operator services. This service is defined as any automatic or live assistance provided to a customer to arrange for the billing or completion, or both, of a telephone call.<sup>52</sup> Plateau maintains that it meets this requirement by providing all of its customers with access to operator services through either Plateau itself or other carriers, primarily ILECs or interexchange carriers (IXCs).<sup>53</sup>

The seventh service common carriers must offer, or intend to offer, is access to interexchange service to make and receive intraLATA and interLATA interexchange calls. Equal access is not required inasmuch as "[t]he FCC do[es] not include equal access to interexchange service among the services supported by universal service mechanisms."<sup>54</sup> Plateau asserts it satisfies this requirement by providing all of its customers the ability to make

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<sup>48</sup> *Id.*

<sup>49</sup> Plateau Exh. 4 (Phelps Direct), p. 7.

<sup>50</sup> 47 C.F.R. § 54.101(a).

<sup>51</sup> Plateau Exh. 4 (Phelps Direct), pp 7-8.

<sup>52</sup> *First Report and Order*, 12 FCC Rcd at 8817, ¶ 75.

<sup>53</sup> Plateau Exh. 4 (Phelps Dir.), p. 8.

<sup>54</sup> *First Report and Order*, 12 FCC Rcd at 8819, ¶ 78.

and receive interexchange calls through an agreement Plateau has with an IXC.<sup>55</sup> Toll charges are included in the Plan's monthly fee.<sup>56</sup> Separately, SRUSF Rule 24.A(9) provides that a carrier seeking ETC designation must acknowledge that it may be required to provide "equal access if all other ETCs in the designated area relinquish their designations."<sup>57</sup> Plateau avers it will provide equal access if all other ETC's cease providing ETC services.<sup>58</sup>

The eighth service is the ability to place a call to directory assistance. White pages directories and listings are not required service offerings for purposes of ETC designation.<sup>59</sup> Plateau says it meets this requirement by providing all of its customers with access to directory assistance by dialing "411" or "555-1212."<sup>60</sup>

Lastly, the ninth required supported service is toll limitation for qualifying low-income customers.<sup>61</sup> An ETC must offer either toll control or toll blocking services to qualifying Lifeline customers at no charge. The FCC no longer requires an ETC to provide both services as part of the Toll Limitation Service required under 47 C.F.R. §54.101(a)(9).<sup>62</sup> However, ETCs must provide toll blocking, which allows customers to prevent the completion of outgoing toll calls.<sup>63</sup> Plateau has committed to participating in Lifeline and provide toll blocking capability.<sup>64</sup> Plateau also has pledged to utilize the same technology that it currently uses to provide service to

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<sup>55</sup> Tr. (Phelps), p. 38; Plateau Exh. 4 (Phelps Direct), p. 8.

<sup>56</sup> Tr. (Phelps), p. 38.

<sup>57</sup> 17.11.10.24(A)(9) NMAC.

<sup>58</sup> Tr. (Phelps), pp. 72-75; Plateau Exh. 5 (Phelps Rebuttal), p. 3.

<sup>59</sup> *First Report and Order*, 12 FCC Rcd at 8821, ¶¶ 80-81.

<sup>60</sup> Plateau Exh. 4 (Phelps Direct), p. 8.

<sup>61</sup> *See* fn. 29 *supra*.

<sup>62</sup> *Fourth Order on Reconsideration*, 13 FCC Rcd 5318, at ¶¶ 114-116, 1997 WL 797532 at \*37.

<sup>63</sup> *First Report and Order*, 12 FCC Rcd at 8821-8822, ¶ 82.

<sup>64</sup> Plateau Exh. 4 (Phelps Direct), p. 9; Tr. (Phelps), p. 39.

its Lifeline customers.<sup>65</sup> Additionally, Plateau states it has been an active participant in the Commission's Lifeline rulemaking proceeding, Case No. 05-00313-UT, and supports the outreach initiatives being developed in that proceeding.<sup>66</sup>

Staff believes Plateau has shown its readiness and ability to provide the nine supported services in RSA 6. Staff witness Ripperger testified that Plateau meets the basic requisite elements of each of the supported services and that its universal service offering is "adequate."<sup>67</sup>

The evidence of record shows Plateau has demonstrated the capability and commitment to provide the supported services necessary for approval of its universal service offering.

### 3. Advertising

Pursuant to section 214(e)(1) of the Act, ETCs must advertise the availability of the supported services, including Lifeline and Linkup. Based upon the recommendations of the Joint Board on Universal Service the FCC has not adopted particular standards regarding advertising using media of general distribution.<sup>68</sup> However, in *Virginia Cellular* the FCC concluded that the petitioning carrier satisfied the advertising requirement by "certif[ying] that it 'will use media of general distribution that it currently employs to advertise its universal service offerings throughout the service areas designated by the Commission.'"<sup>69</sup> Additionally, *Virginia Cellular* addressed alternative methods for advertising Lifeline and Linkup programs.<sup>70</sup> Echoing its prior decisions, the FCC concluded, "because an ETC receives universal service support only to the

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<sup>65</sup> *Id.*

<sup>66</sup> Tr. (Phelps), pp. 90-92.

<sup>67</sup> Tr. (Ripperger), p. 134; See Staff Exh. 1 (Ripperger Direct), pp. 10-16.

<sup>68</sup> *First Report and Order*, 12 FCC Rcd at 8860, ¶ 148.

<sup>69</sup> 19 FCC Rcd at 1574, ¶ 25 (quoting *Virginia Cellular* Petition at 9).

<sup>70</sup> *Id.* ("[i]n addition, *Virginia Cellular* details alternative methods it will employ to advertise the availability of its services. For example, *Virginia Cellular* will provide notices at local unemployment, social security, and welfare offices to the unserved consumers can learn about *Virginia Cellular*'s service offerings and learn about Lifeline and Linkup discounts").

extent that it serves customers, we believe that strong economic incentives exist, in addition to the statutory obligation, for an ETC to advertise its universal service offering in its designated service area.”<sup>71</sup>

Plateau witness Phelps testified that Plateau “currently advertises the availability of the supported services and the corresponding charges in a manner that informs the general public within its designated service area.”<sup>72</sup> Mr. Phelps said Plateau will do so in RSA 6 by utilizing the same media of general distribution that it currently employs in RSAs 2 and 4, such as newspapers, radio, billboard advertising and informational brochures available at its retail locations.<sup>73</sup> Additional evidence proffered by Plateau at the hearing supports Plateau’s position. The record reveals that Plateau provides brochures regarding its universal service offering at its retail locations accompanied by a Lifeline/Linkup “Frequently Asked Question” flyer, and advertises the offering in newspapers and on radio stations.<sup>74</sup> Furthermore, as discussed above, Mr. Phelps testified that Plateau has participated in workshops initiated by the Commission in Case No. 05-00313-UT concerning Lifeline and Linkup initiatives, and has committed to comply with advertising and outreach programs established in the rulemaking proceeding.<sup>75</sup>

Staff is of the opinion that Plateau has made a sufficient showing that it will adequately advertise the supported services and Lifeline and Linkup in the areas it proposes for expanded ETC designation.<sup>76</sup>

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<sup>71</sup> *Id.*

<sup>72</sup> Plateau Exh. 4 (Phelps Direct), p. 10.

<sup>73</sup> *Id.*

<sup>74</sup> See Plateau Exh. 1 (Petition), Exh. F thereto and Plateau Exh. 4 (Phelps Direct), p. 10. See also Notice of Plateau Telecommunications, Inc.’s Compliance to Provide Additional Documents in Case No. 03-00345-UT (filed Feb. 27, 2004).

<sup>75</sup> Tr. (Phelps), pp. 90-92.

<sup>76</sup> Staff Exh. 1 (Ripperger Direct), p. 15.

Plateau has demonstrated compliance with the Commission's advertising standard.

#### **4. Providing Services Throughout the Designated Area**

Section 214(e)(1) of the Act provides that a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service areas. A service area is "a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms."<sup>77</sup>

Designation of an ETC in areas served by rural ILECs must be at the study area level, unless and until the FCC and the states establish a different definition under the FCC's procedures prescribed in 47 C.F.R. § 54.207(c) and (d).<sup>78</sup> A "study area" is commonly known as an ILEC's existing service area and generally includes all of the exchanges in which the ILEC provides service within the state.<sup>79</sup>

As indicated above, Plateau is requesting federal ETC designation in the entire service areas of Leaco, Peñasco Valley, Tularosa Basin, and in all of Windstream Zone 1 in RSA 6. Plateau is also seeking federal ETC designation to receive IAS support in the non-rural Qwest wire centers in RSAs 2, 4 and 6. Plateau is currently licensed to provide service in the entirety of the service areas requested.<sup>80</sup>

Initially, a map attached to Plateau's Petition inadvertently depicted a cell tower site in MATI's service area that should not have been represented on the map. In response to cross-examination by counsel for MATI, Plateau confirmed that the tower site had incorrectly been

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<sup>77</sup> 47 C.F.R. § 54.207(a). See 17.11.10.24.A(1) NMAC.

<sup>78</sup> 47 C.F.R. § 54.207(b).

<sup>79</sup> *Id.*

<sup>80</sup> Plateau Exh. 4 (Phelps Direct), pp. 2, 4.



included on the map and that Plateau does not have towers on the Mescalero Reservation.<sup>81</sup> Moreover, in response to questioning by the Hearing Examiner, Plateau stipulated that it is not seeking ETC status in MATI's area.<sup>82</sup> Nonetheless, while Plateau is not requesting to provide universal service in the MATI, Dell Telephone Cooperative and Windstream Zone 2 service areas of RSA 6,<sup>83</sup> Plateau committed at the hearing to being prepared to provide ETC service in those areas in addition to all of the other service areas in issue in the event that all other ETCs relinquish their designations in a given service area in conformity with the equal access requirement under 17.11.10.24.A(9) NMAC.<sup>84</sup>

For its part, Staff believes Plateau has shown it can and will meet its obligation as an ETC to offer and provide the universal service offering throughout its requested designated rural service areas and non-rural exchanges.<sup>85</sup> The Commission agrees.

## **5. The Public Interest**

Where a common carrier requests ETC designation in non-rural ILEC exchanges (like Qwest's) served by one or more carriers with ETC standing, section 214(e)(2) dictates that a state commission "shall" grant the requesting carrier ETC status if its meets the section 214(e)(1) eligibility criteria. However, in cases involving requests for ETC designation in rural ILEC service areas, section 214(e)(2) prescribes that a state commission must also find that the requested designation will be in the public interest. A public interest determination is necessary

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<sup>81</sup> Tr. (Phelps), p. 22.

<sup>82</sup> *Id.* pp. 27-30.

<sup>83</sup> See fn. 23 *supra*. See also Exhibit 7 to Joint Motion for Post-Hearing Admission of Replacement and Supplemental Exhibits.

<sup>84</sup> Tr. (Phelps), pp. 72-75.

<sup>85</sup> See Joint Proposed Recommended Decision, pp. 18-19.